Supreme Court, U.S.
FILED
05-177 JUL 27 2005
OFFICE OF THE CLERK

No. 05-

IN THE

Supreme Court of the United States

WILLIAM R. DORN, SR., *et al.*,

Petitioners,

v.

GENERAL MOTORS CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

HAROLD DUNNE
Powerscourt Building, Suite 306
17199 North Laurel Park Drive
Livonia, Michigan 48152-7904
(734) 542-3444

Attorney for Petitioners

195460

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

The following two questions are presented:

1. Does an Intake Questionnaire that fully informs the EEOC of all aspects of plaintiff's age discrimination claim under the Age in Employment Discrimination Act suffice to meet the requirements of the EEOC's charge-filing requirements.

2. When employees are forced to choose between signing a waiver presented by the employer and the union, accepting either employment or retirement, both of which violates their rights under the employer/union Collective Bargaining Agreement, or be laid off with out pay, and the employees sign waivers under protest, do their arguments fall under the totality of the circumstances criteria.

PARTIES TO THE PROCEEDING

Petitioners

William R. Dorn, Victor A. Babecki, Stephen J. Barnacz, Ronald C. Bell, Martin T. Binz, Stephen D. Boelker, Willie G. Byrd, August M. Falcone, Frank Garzio, Peter Golowatsch, Thomas M. Gurba, James D. Jareszewski, Anthony Malinoskie, Stanley Marziarz, Henry Palejczyk, Robert Ryan, James H. Sexton, Kenneth T. Satrycharz, Charles Upshur, Francis Witkowski, and James Zeek.

Respondents

General Motors Corporation, Delphi Automotive Systems, and the United Automobile, Aerospace and Agricultural Implement Workers of America, International Union (UAW).

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	vi
TABLE OF APPENDICES	ix
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE PETITION	4
I. REVIEW IS WARRANTED TO RESOLVE A CONFLICT AMONG THE CIRCUIT COURTS CONCERNING WHETHER A COMPLETED EEOC INTAKE QUESTIONNAIRE FOR AN ADEA COMPLAINT CONSTITUTES A CHARGE THAT SATISFIES THE 300 DAY TIME LIMITATION PERIOD	5

Contents

Page

A. The Sixth Circuit's holding is too restrictive and is in conflict with the better reasoned holdings of other Circuits 5

B. The Seventh Circuit adopts a well reasoned approach that an Intake Questionnaire the details all necessary information required for an ADEA claim satisfies the EEOC charge-filing requirement 8

C. Other Courts adopting the broad view of what constitutes a charge-filing for purposes of an EEOC claim under either Title VII or the ADEA 10

D. A District Court within the Sixth Circuit 13

E. Review of the writ is necessary 14

II. REVIEW IS NECESSARY TO SET GUIDELINES FOR EMPLOYERS AND UNIONS WHEN FORCING EMPLOYEES TO SIGN WAIVERS THAT VIOLATE THEIR CONTRACTUAL RIGHTS 14

A. The Sixth Circuit's position 14

B. Cited case law 16

Contents

Page

C. Petitioners' option: sign the waivers or be fired. This falls under the totality of the circumstances which has never been considered by the Supreme Court 17

D. The need to grant the writ 19

CONCLUSION 20

TABLE OF CITED AUTHORITIES

Page

Cases:

Adams v. Phillip Morris, Inc.,
67 F.3d 580 (6th Cir. 1995) 15, 16, 18

Bihler v. Singer Co.,
710 F.2d 96 (3d Cir. 1983) 8

Borman v. AT&T Communications,
875 F.2d 399 (2d Cir., *cert. denied*,
493 U.S. 924 (1989) 15, 16

Caldwell v. Nat'l Ass'n of Home Builders,
771 F.2d 1051 (7th Cir. 1985) 8

Casavantes v. California State Univ.,
732 F.2d 1441 (9th Cir. 1984) 12, 13

Diez v. Minn. Mining & Mfg. Co.,
88 F.3d 672 (8th Cir. 1996) 6

Dimas v. Michigan Dept. of Civil Rights,
U.S. WD Mich, Case No. 4:02-CV-178,
2004 LEXIS 4834) 13

Downes v. Volskwagen of America,
41 F.3d 1132 (7th Cir. 1994) 9, 10, 13

EEOC v. Sears Roebuck & Co.,
650 F.2d 14 (2d Cir. 1981) 12

Cited Authorities

Page

Greene v. Whirlpool Corp.,
708 F.2d 128 (4th Cir. 1983, *cert denied*,
464 U.S. 1042, 79 L. Ed. 2d 171,
104 S. Ct. 707 (1984) 8

Peterson v. City of Wichita,
888 F.2d 1307 (10th Cir., *cert. denied*,
495 U.S. 932, 109 L. Ed. 2d 502,
110 S. Ct. 2173 1989) 12

Pijnenburg v. West Georgia Health System,
255 F.3d 1304 (11th Cir. 2001) 13

Price v. Southwestern Bell Telephone Co.,
687 F.2d 74 (5th Cir. 1982) 10, 11, 13

Rabzak v. County of Berks,
815 F.2d 17 (3d Cir. 1987) 9

Riley v. American Family Mutual Ins. Co.,
881 F.2d 368 (7th Cir. 1989) 15

Rogan v. Giant Eagle, Inc.,
113 F. Supp. 2d 777
(U.S. Dist. WD of Penn. 2000) 11, 12

Schlueter v. Anheuser-Busch,
132 F.3d 455 (8th Cir. 1998) 13

Terrell v. United States Pipe & Foundry Co.,
644 F.2d 1112 (5th Cir. 1981) 11

Cited Authorities

Page

W. Steffen v. Meridian Life Ins.,
859 F.2d 534 (7th Cir. 1988) 8, 9

Waiters v. Robert Bosch Corp., 683 F.2d 89 (4th Cir. 1982) 9

Weigel v. Baptist Hosp.,
302 F.3d 367 (6th Cir. 2002) 6

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Sixth Circuit Filed April 28, 2005 ..... 1a

Appendix B — Order Denying Plaintiffs' Motion To Set Aside Order Of Dismissal And Order Granting Defendants' Motions For Summary Judgment Of The United States District Court For The Eastern District Of Michigan, Southern Division Dated December 12, 2003 ..... 16a

Appendix C — Order Granting Defendants' Motions For Partial Dismissal Of The United States District Court For The Eastern District Of Michigan, Southern Division Dated December 12, 2002 ... 26a

OPINION BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is an unpublished opinion, which is attached as Appendix A. The trial court did not issue an opinion; instead it relied on its statements in the record, which is attached as Appendix B and C.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Labor Management Relations Act, 29 U.S.C. § 185.

The Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and 28 U.S.C. § 1331.

STATEMENT OF THE CASE

Petitioners are twenty-one employees of General Motors Corporation ("GM") who were employed at GM's Trenton, New Jersey facility. In 1999 GM spun off its Delphi Automotive Division into a public corporation independent of GM. This corporation became known as Delphi Inc. ("Delphi"). Petitioners were also members of the United Auto Workers International Union ("UAW"), which had a Collective Bargaining Agreement ("CBA") with both GM and Delphi. With a couple of exceptions the ages of Petitioners ranged between 48 and 55 with an average employment of 25 years.

Under the Delphi-UAW CBA all Petitioners were paid by Delphi as laid off employees until Delphi could place them into a Delphi facility within 50 miles of their home plant, the GM Trenton, New Jersey facility, a facility that Delphi never bought from GM. All Petitioners were skilled tradesmen and Delphi could not place them into a Delphi facility within 50 miles of the Trenton facility.

Subsequently, Petitioners were ordered by Delphi to make one of the following choices: either (1) accept employment at a Delphi facility 400 miles from the Trenton facility; or (2) accept a pension; or (3) be placed on an indefinite layoff without benefits.

Under either the GM-UAW CBA, or the Delphi-UAW CBA, Petitioners had a contractual right to refuse an offer to transfer to a Delphi facility that was located at a distance greater than 50 miles from the GM Trenton facility. Thus, when refusing an offer to transfer to a facility that was further than a radius of 50 miles from Trenton Petitioners would remain on the payroll, in what was called "Protected Status," until such time as they could be placed on a job within the CBA's defined 50 miles radius.

Also, under either the GM-UAW, or Delphi CBA, Petitioners could not be forced to retire under the Pension Plan. All retirements were voluntary, such as a mutual early (agreement by the employee and employer), normal retirement, "30 and out," etc.

Delphi and GM, with the concurrence of the UAW, told Petitioners, in writing, that if they wanted to avoid a layoff without pay, which would mean 10 to 15 years at their ages of 48 to 55, they would have to accept either a transfer beyond the 50 mile radius or retire. But, if they accepted either a transfer or